

Message Text

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TO AMEMBASSY NOUAKCHOTT

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FOLLOWING IS A REPEAT

QUOTE

R 042315Z APR 74

AIDAC

JOINT STATE/AID MESSAGE

E.O. 11652:GDS

SUBJECT: FAA SECTION 32 - POLITICAL PRISONERS

TAGS: EAID, PINT, MR

1. SUMMARY. THIS MESSAGE PROVIDES INFORMATION ON A NEW PROVISION OF THE FOREIGN ASSISTANCE ACT (FAA) OF 1973 AND REQUESTS AFFECTED MISSIONS TO CABLE APPROPRIATE RESPONSE PRIOR TO APRIL 22.

2. SECTION 32 OF THE FAA OF 1973 IS AS FOLLOWS: "IT IS THE SENSE OF CONGRESS THAT THE PRESIDENT SHOULD DENY ANY ECONOMIC OR MILITARY ASSISTANCE TO THE GOVERNMENT OF ANY FOREIGN COUNTRY WHICH PRACTICES THE INTERNMENT OR IMPRISONMENT OF THAT COUNTRY'S CITIZENS FOR POLITICAL PURPOSES."

3. EMBASSIES ARE REQUESTED TO PROVIDE ASSESSMENT OF HOW THIS LEGISLATION COULD AFFECT THE STATUS OF ASSISTANCE PROGRAMS IN THEIR COUNTRIES. SPECIFICALLY, WE WOULD

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APPRECIATE ASSESSMENTS OF THE EXTENT AND NATURE, IF ANY,

OF THE INTERNMENT OR IMPRISONMENT OF CITIZENS FOR POLITICAL PURPOSES; WHETHER THROUGH LEGISLATION AND/OR PRACTICE, THERE IS A CONSISTENT PATTERN OF RELIABLY ATTESTED VIOLATION OF THE RIGHT TO BE FREE OF ARBITRARY DETENTION AND CERTAIN OTHER CLOSELY RELATED RIGHTS (SEE PARA 5(B) BELOW), AND THE POSITION OF THE HOST GOVERNMENT ON THIS MATTER. NO REPRESENTATIONS TO HOST GOVERNMENTS SHOULD BE MADE IN DEVELOPING THIS INFORMATION. PREVIOUS REPORTS MAY BE REFERENCED. IF IT APPEARS TO EMBASSY THAT CONDITION AT WHICH SEC. 32 DIRECTED MAY EXIST, IT IS REQUESTED TO SUGGEST ANY OPPORTUNITIES FOR APPROPRIATE U.S. ACTION OR REPRESENTATION TO IMPROVE THE SITUATION, INCLUDING COMMENTS ON APPROPRIATENESS AND PROBABLE EFFECT OF DENYING ECONOMIC OR MILITARY ASSISTANCE ON BASIS OF SEC 32.

4. FOR YOUR BACKGROUND, OTHER FAA PROVISIONS, SHOWING RELATED CONGRESSIONAL CONCERN AND INTENT ARE SECTION 102 (STATEMENT OF POLICY) SECTIONS, 201(B), 211(A), AND 251(B), DEALING WITH THE RESPONSIVENESS OF GOVERNMENTS TO THE CONCERNS OF THEIR PEOPLE, RULE OF LAW, AND INDIVIDUAL FREEDOMS, SECTION 207(A) CALLING FOR "THE ENCOURAGEMENT OF STRONG ECONOMIC, POLITICAL, AND SOCIAL INSTITUTIONS NEEDED FOR A PROGRESSIVE DEMOCRATIC SOCIETY", AND SECTION 501 DESCRIBING ONE OBJECTIVE OF MILITARY ASSISTANCE AS "CREATING AN ENVIRONMENT OF SECURITY AND STABILITY IN THE DEVELOPING FRIENDLY COUNTRIES ESSENTIAL TO THEIR MORE RAPID SOCIAL, ECONOMIC AND POLITICAL PROGRESS."

5. A. "POLITICAL PRISONERS" IS NOT DEFINED. AN AMENDMENT TO REQUIRE CUTTING OFF ASSISTANCE FAILED OF ADOPTION AFTER DEBATE IN WHICH DIFFICULTY OF DEFINITION NOTED AND FROM WHICH IT WOULD APPEAR THAT IN ORDER GIVE EFFECT OF TOTALITY OF CONGRESSIONAL PURPOSE EMBODIED IN ACT, EXECUTIVE SHOULD PROCEED CASE BY CASE ON BASIS OF ALL FACTS AND WITH REGARD TO ALL PURPOSES OF ACT, GIVING FULL AND DUE WEIGHT TO INTEREST IN PROMOTING RESPECT FOR RULE OF LAW AND HUMAN RIGHTS WHERE ERODED OR VIOLATED BY POLITICAL IMPRISONMENTS.

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B. IN EFFORT TO GIVE EFFECT TO SENSE OF CONGRESS EXPRESSED IN SECTION 32, WE BELIEVE DIFFICULTY IN DEFINING "POLITICAL PRISONER" CAN BEST BE DEALT WITH BY REFERENCE TO STANDARD ENJOYING ALREADY ESTABLISHED INTERNATIONAL APPROVAL AND RESPECT. ACCORDINGLY, IN APPRAISING DEGREE TO WHICH PARTICULAR SITUATIONS

MAY COME WITHIN SECTION 32, EMBASSY SHOULD CONSIDER
(A) WHETHER PERSONS HAVE BEEN ARRESTED, DETAINED OR
IMPRISONED ARBITRARILY IN THE SENSE OF ARTICLE 9 OF
UN DECLARATION OF HUMAN RIGHTS (ARTICLE 9 READS:
"NO ONE SHALL BE SUBJECT TO ARBITRARY ARREST, DETENTION
OR EXILE. FOR TEST OF DECLARATION, SEE 5 WHITEMAN
DIGEST 237-242.) (B) WHETHER BY LAW OR IN PRACTICE
SUCH PERSONS ARE DEPRIVED OF (1) RIGHTS UNDER ARTICLES
10 AND 11 OF UNIVERSAL DECLARATION RELATING TO PROPER
CHARGES AND TRIAL AND/OR (2) RIGHTS UNDER ARTICLES
18, 19, 20 AND 21, RELATING TO SUCH FUNDAMENTAL
POLITICAL FREEDOMS AS FREEDOM OF THOUGHT AND
CONSCIENCE, OF OPINION AND EXPRESSION, OF PEACEFUL
ASSEMBLY AND ASSOCIATION AND PARTICIPATION IN SELF-
GOVERNMENT. WHILE SUCH TESTS MIGHT INCLUDE PERSONS
ARBITRARILY IMPRISONED BECAUSE OF RACE OR RELIGION OR
SOME OTHER FACTOR RATHER THAN STRICT POLITICS, THIS
RESULT APPEARS REASONABLE AND NOT INCONSISTENT WITH
CONGRESSIONAL PURPOSE. AUTHORITY OF UNIVERSAL DECLARATION
OF HUMAN RIGHTS AS INTERNATIONAL STANDARD IS EVIDENCED
BY ITS ADOPTION BY UN GENERAL ASSEMBLY IN 1948 BY OVER-
WHELMING MAJORITY IN FURTHERANCE UN'S DUTY UNDER ARTICLES
55 AND 56 OF UN CHARTER TO PROMOTE HUMAN RIGHTS AND
FUNDAMENTAL FREEDOMS - A DUTY IN THE DISCHARGE OF WHICH
ALL MEMBERS ARE PLEDGED UNDER ARTICLE 56 TO COOPERATE.
(C) FINALLY, AID/STATE BELIEVE CONGRESS PRINCIPALLY
CONCERNED ABOUT SUBSTANTIAL AND CONTINUED VIOLATIONS
OF ABOVE STANDARDS OCCURRING AS MATTER OF OFFICIAL
POLICY OR OF GROSS NEGLIGENCE ON PART OF GOVERNMENT.

6. SINCE, IN ACCORDANCE SECTION 32, "POLITICAL
PRISONER" FACTOR AS ABOVE DISCUSSED WILL BE EVALUATED
IN CONNECTION NEW OR CONTINUED ASSISTANCE PROGRAMS,
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POSTS SHOULD REVIEW PAST REPORTING AND PRESENT SITUATION
IN LIGHT STANDARDS OUTLINED ABOVE AND PROVIDE SUCH
ADDITIONAL INFORMATION ANALYSIS AND RECOMMENDATION AS
MAY BE HELPFUL TO ONGOING EVALUATION. IN ANY EVENT,
APPROPRIATE ACKNOWLEDGEMENT PRESENT TELEGRAM AND CABLE
REPORT OF ANY EMBASSY ASSESSMENT WOULD BE APPRE-
CIATED BY APRIL 22, SINCE CONGRESSIONAL HEARINGS ON
FY 1975 ASSISTANCE PROGRAMS ARE SCHEDULED TO START IN
EARLY MAY, AND THIS SUBJECT MAY WELL BE RAISED IN
HEARINGS.

7. IN PROVIDING ANY DETAILED ANALYSIS IN LIGHT STANDARDS
ABOVE OUTLINED, POSTS MAY FIND FOLLOWING CONSIDERATIONS
RELEVANT:

(1) THE LEGAL/JUDICIAL PROCESSES WHICH RELATE TO THE
ARREST, DETENTION AND TRIAL OF THE COUNTRY'S CITIZENS.

(2) WHETHER THE COUNTRY'S LAW PROHIBITS ARBITRARY
ARREST AND DETENTION.

(3) WHAT REMEDIES (DEFENSES; OPPORTUNITIES TO CHALLENGE
IN COURT; OPPORTUNITIES TO SECURE REDRESS) THE LAW
PROVIDES TO A PERSON WHO MAY BE ARBITRARILY ARRESTED
OR DETAINED OR DENIED FAIR AND OPEN TRIAL WITH
REASONABLE PROMPTNESS.

(4) SPECIFIC FACTS RELEVANT TO CASES WHICH HAVE GIVEN
RISE TO A POLITICAL PRISONER ISSUE WITH ATTENTION TO
WHETHER THERE IS A CONSISTENT PATTERN OF RELIABLY
ATTESTED VIOLATION OF THE RIGHT TO BE FREE OF ARBITRARY
ARREST, DETENTION OR IMPRISONMENT.

(5) AS DISCUSSED ABOVE, ANY OPPORTUNITIES FOR APPROPRIATE
U.S. ACTION OR REPRESENTATION TO IMPROVE THE SITUATION,
AND COMMENT ON THE APPROPRIATENESS AND PROBABLE EFFECT
OF DENYING ECONOMIC OR MILITARY ASSISTANCE BECAUSE OF
THE POLITICAL PRISONER ISSUE.

(6) FACTORS IN THE POLITICAL AND ECONOMIC ENVIRONMENT
OF THE COUNTRY WHICH ARE RELEVANT TO THE ENCOURAGEMENT
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OF THE RULE OF LAW AND THE STRENGTHENING OF FREEDOM
AND OPPORTUNITY FOR ITS CITIZENS.

8. ALTHOUGH FOREIGN MILITARY SALES ACT CREDITS DO NOT
UNDER FMSA LEGALLY CONSTITUTE "MILITARY ASSISTANCE",
RESPONSE FROM ATHENS ALSO REQUESTED.

9. DEFENSE CONCURS.

RUSH

UNQUOTE. INGERSOLL

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